

1986

# Retirement Benefits For Nonjudicial And Nonlegislative Elected State Constitutional Officers

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## Recommended Citation

Retirement Benefits For Nonjudicial And Nonlegislative Elected State Constitutional Officers California Proposition 57 (1986).  
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# Retirement Benefits for Nonjudicial and Nonlegislative Elected State Constitutional Officers

## Official Title and Summary Prepared by the Attorney General

RETIREMENT BENEFITS FOR NONJUDICIAL AND NONLEGISLATIVE ELECTED STATE CONSTITUTIONAL OFFICERS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Presently retirement benefits for nonjudicial and nonlegislative elected state constitutional officers are governed by statute and differ depending upon the dates such officers held office. For those who took office prior to October 7, 1974, their retirement benefits have been increased as the compensation paid their successors has increased. This measure amends the Constitution to preclude the retirement benefits of any nonlegislative or nonjudicial elected state constitutional officers from increasing or being affected by changes in compensation payable to their successors on or after November 5, 1986. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: This measure would reduce the future retirement benefits of fewer than 20 people, resulting in annual state savings of about \$400,000. The state would realize savings because these retirement benefits would not be adjusted for increases in the salaries of state elected officials due to take effect in January 1987 and in future years.

## Final Vote Cast by the Legislature on SCA 32 (Proposition 57)

Assembly: Ayes 74  
Noes 0

Senate: Ayes 38  
Noes 0

## Analysis by the Legislative Analyst

### Background

The seven statewide elected officials (such as the Governor and the State Treasurer) and the four elected members of the Board of Equalization receive pension benefits through a state retirement system. Persons serving in these 11 offices receive initial retirement benefits, up to a maximum of 60 percent of salary, based on the number of years they serve in office.

For officials taking office *on or after* October 7, 1974, retirement benefits are based on their *highest salary while in office*. These benefits increase each year at the rate of inflation. Thus, if prices go up by 5 percent in any one year, retirement benefits increase by 5 percent in the following year.

For officials who took office *prior to* October 7, 1974, however, benefits are based on the *current salary of the office from which the official retired*. These benefits also increase each year by the rate of inflation in the prior year. As a result, these retired persons receive two adjustments

to their benefits: (1) a direct, annual cost-of-living adjustment, and (2) an indirect adjustment when the salaries of the 11 state officials are increased.

### Proposal

This constitutional amendment eliminates the connection between future increases in the salaries of the persons serving in the 11 state offices and the retirement benefits of those officials who took office prior to October 7, 1974. Thus, beginning November 5, 1986, these retired officials (or their beneficiaries) would receive *only one* adjustment—an annual cost-of-living increase.

### Fiscal Effect

This measure would reduce the future retirement benefits of fewer than 20 people, resulting in annual state savings of about \$400,000. The state would realize savings because these retirement benefits would not be adjusted for increases in the salaries of state elected officials due to take effect in January 1987 and in future years.

If you need an absentee ballot call your county clerk or registrar of voters for an application.

## Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 32 (Statutes of 1986, Resolution Chapter 57) expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT TO ARTICLE III

Sec. 7. (a) *The retirement allowance for any person, all of whose credited service in the Legislators' Retirement System was rendered or was deemed to have been rendered as an elective officer of the state whose office is provided for by the California Constitution, other than a judge and other than a Member of the Senate or Assembly, and all or any part of whose retirement allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement, or for the survivor or beneficiary of such a person, shall not be increased or affected in any manner by changes on or after November 5, 1986, in the compensation payable to the officer holding the office which the member last held prior to retirement.*

(b) *This section shall apply to any person, survivor, or beneficiary described in subdivision (a) who receives, or is receiving, from the Legislators' Retirement System a retirement allowance on or after November 5, 1986, all or any part of which allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement.*

(c) *It is the intent of the people, in adopting this section, to restrict retirement allowances to amounts reasonably to be expected by certain members and retired members of the Legislators' Retirement System and to preserve the basic character of earned retirement benefits while prohibiting windfalls and unforeseen advantages which have no relation to the real theory and objective of a sound retirement system. It is not the intent of this section to deny any member, retired member, survivor, or beneficiary a reasonable retirement allowance. Thus, this section shall not be construed as a repudiation of a debt nor the impairment of a contract for a substantial and reasonable retirement allowance from the Legislators' Retirement System.*

(d) *The people and the Legislature hereby find and declare that the dramatic increase in the retirement allowances of persons described in subdivision (a) which would otherwise result when the compensation for those offices increases on November 5, 1986, or January 5, 1987, are not benefits which could have reasonably been expected. The people and the Legislature further find and declare that the Legislature did not intend to provide in its scheme of compensation for those offices such windfall benefits.*

## Retirement Benefits for Nonjudicial and Nonlegislative Elected State Constitutional Officers

### Argument in Favor of Proposition 57

One of our public pension systems needs some delicate surgery.

The voters of this state must perform this operation **NOW**—in order to prevent millions of taxpayer dollars from being wasted on the pension benefits of a handful of former state officials.

Proposition 57 gives **YOU**—the voters—an opportunity to do the job properly.

Proposition 57 will correct a significant legal problem that involves a very small number of cases. Because of the combined effects of an outdated law, an old court decision and a new law that takes effect next January 1st, 16 former constitutional officers could receive huge, undeserved increases in their pensions.

If these unwarranted increases are allowed to take effect, the pensions of this favored group will be several times larger than the salaries they earned in office.

**PROPOSITION 57 WOULD STOP SCANDALOUS PENSION INCREASES!**

Current law provides that when the salaries of our con-

stitutional officers (such as the Governor and the Attorney General) are increased, the pensions of 16 *retired* constitutional officers are increased in a similar manner.

Proposition 57 would break this link between salaries of our current state officials and the pensions of retired officials!

**AS VOTERS, YOU CAN AFFECT THE SIZE OF THESE PENSIONS!**

Proposition 57 must be approved **NOW** to stop these retired officials from receiving outrageous increases in their pensions come January 1st!

Like the scalpel of a skilled surgeon, Proposition 57 goes right to the source of the problem and eliminates it.

**WADIE P. DEDDEH**  
State Senator, 40th District  
Author of proposition

**LEO T. MCCARTHY**  
Lieutenant Governor

**ERNEST DRONENBURG**  
Member, State Board of Equalization, 3rd District

### Rebuttal to Argument in Favor of Proposition 57

Would Proposition 57 truly "stop scandalous pension increases"?

Voters should examine this measure closely.

*First*, Proposition 57 only applies to "state constitutional officers" who never served in the Legislature as members of the Assembly or State Senate.

*Second*, Proposition 57 only limits pension increases based on increases "*in the compensation payable to the officer holding the office which the [retiree] last held prior to retirement.*"

Even if Proposition 57 passes, the Legislature would be free to increase retirement benefits on any basis *other than* the compensation payable to current officeholders. Proposition 57 does not guarantee any real limitation on pension increases.

*Third*, it may be too late to take away the exorbitant pensions the Legislature has promised former and current constitutional officers. Any person who has served as Gov-

ernor, Attorney General or other constitutional officer may have a "vested" right to promised increases based on the salaries of later officeholders.

The reason is that retirement benefits are considered part of a person's employment contract. Under the *United States Constitution (Article I, Section 10)*, a state may not pass any laws "*impairing the obligation of contracts.*"

As a result, the courts would be forced to hold that Proposition 57 could not deprive retirees of pension increases promised while they were in office by an overly generous or wasteful Legislature.

Certain politicians would then blame the courts!

The only way to "stop scandalous pension increases" for former officeholders may be to stop large salary increases for current officeholders.

**GARY B. WESLEY**  
Attorney at Law

Voting. Your response-  
your ability.

Will Courtenay, San Francisco

# Retirement Benefits for Nonjudicial and Nonlegislative Elected State Constitutional Officers

57

## Argument Against Proposition 57

This measure is a proposal by the Legislature to place in our State Constitution a limit on the retirement benefits payable to "state constitutional officers" (i.e., the Governor, Lieutenant Governor, Attorney General, Secretary of State, Controller, Superintendent of Public Instruction and Treasurer).

The trouble with the proposal is that the only limit would be that retirement benefits *"shall not be increased or affected in any manner by changes on or after November 5, 1986, in the compensation payable to the officer holding the office which the member last held prior to retirement."*

The windfall retirement benefits already being received by former officeholders would continue to flow from the government treasury, and the Legislature would retain the authority to increase these retirement benefits on any basis other than the compensation payable to

subsequent officeholders.

In addition, this measure would not place ANY limit on the retirement benefits payable to a person "whose credited service in the Legislators' Retirement System" is not restricted to service as a constitutional officer. Governor Deukmejian, for example, who served as a State Senator before becoming Attorney General and then Governor, would evidently be unaffected by the limit imposed by this measure, and his retirement benefits as a former Attorney General and Governor could continue to soar based on later increases in compensation to subsequent officeholders.

This measure does not go far enough. For this reason, I respectfully recommend a "no" vote.

GARY B. WESLEY  
*Attorney at Law*

## Rebuttal to Argument Against Proposition 57

Mr. Wesley says Proposition 57 does not go far enough. He is completely WRONG!

Proposition 57 goes as far as legally possible to limit the outrageous pensions received by a select few.

First, Mr. Wesley states that Proposition 57 would not *reduce* the retirement benefits now being received by a handful of former constitutional officers. If it were possible to roll back the pensions of these 16 retirees, the Legislature would have done it.

Legal opinion is unanimous: once a pension benefit is paid to a retiree, it cannot be stopped. This is an excellent reason to vote FOR Proposition 57: if the pensions of these 16 former constitutional officers are allowed to skyrocket as scheduled on January 1, 1987, there will be no chance to reduce them ever again.

YOU—the voters—must approve Proposition 57 NOW to keep these pensions from going any higher!

Second, Mr. Wesley writes that Proposition 57 does not

limit pensions earned by retirees who served in other elected offices before becoming constitutional officers. Again, Mr. Wesley is absolutely WRONG. A great deal of care was taken to make sure that Proposition 57 would limit the future benefits of each and every one of the 16 former officials who receive these unconscionable pensions.

Not a single "NO" vote was cast on Proposition 57 as it moved through the Legislature!

THERE ARE NO LOOPHOLES IN PROPOSITION 57!  
VOTE YES ON PROPOSITION 57!

WADIE P. DEDDEH  
*State Senator, 40th District*

DAN MCCORQUODALE  
*State Senator, 12th District*

ERNEST DRONENBURG  
*Member, State Board of Equalization, 3rd District*

## Here's voting for you, California!

Ray Van Diest, Redding